

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD ANDERSON,

Plaintiff,

vs.

KILOLO KIJAKAZI, Acting
Commissioner of the Social Security
Administration,¹

Defendant.

8:20-CV-251

MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's Motion for Award of Attorney Fees pursuant to the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#). [Filing 30](#). The defendant does not object to the plaintiff's requested fees and expenses in the amount of \$2,883.21 ([filing 30-2](#)); which represents 1.3 hours of work in 2020 at a rate of \$207.78 per hour and 10.8 hours of work in 2021 at a rate of \$212.86 per hour for attorney Wes Kappelman, and 1 hour of work in 2020 at a rate of \$207.78 per hour and .5 hours of work in 2021 at a rate of \$212.86 for attorney Kimberly Schram.² [Filing 30-2](#); [filing 34](#).

The Court has determined that the plaintiff was the prevailing party in this action, as the case was remanded to the Commissioner for further proceedings; that the application for fees was filed in a timely fashion;³ and that

¹ Kilolo Kijakazi is now the Acting Commissioner of the Social Security Administration and has been substituted as a party pursuant to [Fed. R. Civ. P. 25\(c\)](#). [Filing 33](#).

² The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) was adjusted to account for inflation. *See filing 30-1 at 2-3*.

³ An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed no later than 30 days after

the position of the Commissioner was not substantially justified because the administrative law judge made findings that were not supported by substantial evidence. *See Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees, to be paid out of the Judgment Fund administered by the Department of Justice.

IT IS ORDERED:

1. The plaintiff's Motion for Award of Attorney Fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (filing 30) is granted.
2. By separate document, the Court shall enter judgment for the plaintiff and against the defendant providing that the plaintiff is awarded attorney fees of \$2,883.21.
3. That sum shall be sent to plaintiff's counsel, Mr. Kappelman, who shall be responsible for remitting to Ms. Schram her portion of the award.

Dated this 3rd day of August, 2021.

BY THE COURT:


John M. Gerrard
United States District Judge

the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. *See Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002); *see also Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 94-97 (1991).